

Equipment whose primary purpose is to confer an economic benefit does not qualify for the pollution control facilities exemption. See the enclosed copy of 86 Ill. Adm. Code 130.335. (This is a GIL).

November 23, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated July 30, 1999. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We would like to request an opinion, in writing, as to whether our services, which include the cleaning of above ground storage tanks and other vessels and processing services, primarily the separation of waste streams into its component parts, provided by our company are subject to sales tax in your state.

Enclosed is a reprint of a magazine article and marketing information describing COMPANY operations.

If your determination is positive, please send us a Sales Tax License Application.

#### SERVICE OCCUPATION TAX

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. An example would be tangible personal property, such as cutter stock, owned by a tank cleaning company that was transferred to its service customer incident to providing cleaning services. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen

are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers.

#### USE TAX ON EQUIPMENT & SUPPLIES

In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See the enclosed copy of 86 Ill. Adm. Code 150.101. This tax would apply to any equipment or supplies used by a serviceman in this State. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department. The Illinois Use Tax Act does, however, contain provisions that limit multi-state taxation of the same item or items. As the enclosed copy of 86 Ill. Adm. Code 150.310 explains, a purchaser using tangible personal property in Illinois which

has been purchased outside of Illinois and who has paid a tax in another state in respect to the sale, purchase, or use of that property is entitled to a credit, to the extent of the tax properly due and paid in the other state, against this Illinois Use Tax liability. In addition, the "selling price" on which the tax is computed shall be reduced by an amount which represents a reasonable allowance for depreciation for the period of such prior out-of-State use. See the enclosed copies of 86 Ill. Adm. Code 150.105 and 150.110.

For your information, we have also enclosed a copy of 86 Ill. Adm. Code 130.335 concerning the pollution control facilities exemption. The pollution control facilities exemption extends to any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property. From the information you have provided, it appears that the primary purpose of the equipment is for the cleaning of tanks for continued commercial use and not for purposes of pollution control. We do not believe that this type of equipment would generally qualify for the pollution control facilities exemption.

In addition, it is important to note that it has been the Department's long-standing position that equipment whose primary purpose is to confer an economic benefit does not qualify for the pollution control facilities exemption. The information attached to your letter indicates that a large amount of the sludge is reclaimed as usable oil for refining (5,200 barrels of oil out of the 7,500 barrels of sludge). This is the type of information the Department generally looks at when determining whether the equipment is used primarily for commercial or economic benefit rather than pollution control.

I hope this information is helpful. We have enclosed a New Business packet for your convenience. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton  
Associate Counsel